

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES FRANKLIN SIMMONS,

Defendant-Appellant.

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UNPUBLISHED

May 13, 2008

No. 277239

Washtenaw Circuit Court

LC No. 06-001432-FH

Before: Donofrio, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of attempted breaking and entering with intent to commit larceny, MCL 750.110, MCL 750.92, and fingerprinting refusal, MCL 28.243a. We affirm defendant's convictions, but remand for the ministerial task of correcting the judgment of sentence. This case is being decided without oral argument pursuant to MCR 7.214(E).

This case involves defendant's attempt to enter Lake's Radiator Service in Ypsilanti on August 15, 2006, at approximately 7:40 p.m. Ypsilanti Police Officer Yuchasz was patrolling the area, and saw defendant looking into the garage's side windows. The building did not appear to have activity in it. Yuchasz saw defendant shake a door to the building, and then move to the front. Defendant appeared to look in one of the front windows, and then grabbed the front door handle. He shook the front door, and then slammed his shoulder into the door two or three times. At that point, defendant's companion, Joseph Halton, saw the police and yelled to defendant. Defendant started to walk away, but stopped when Yuchasz ordered him to do so. After providing Yuchasz with a false name, defendant explained that he was trying to purchase a radiator for his car. After Yuchasz told defendant that he recognized him, defendant became aggressive. He later refused to cooperate with the booking procedures, and refused to be fingerprinted.

Defendant first argues that the trial court abused its discretion when it refused to appoint substitute counsel prior to trial after defendant requested new counsel. Defendant made this request on the first day of trial before jury selection. Defendant explained his rationale to the trial court as follows:

Yeah, I want to say, your Honor, with no due (sic) respect, I would like to inform the Court that I had filed a Complaint with the Attorney Grievancing (sic)

Committee regarding his performance. With that in mind, I don't believe he can represent me without being . . . biased . . . and I would like the Court to appoint me a new lawyer.

The trial court denied defendant's request.

We review a trial court's decision regarding substitution of counsel for an abuse of discretion. *People v T aylor*, 245 Mich App 460, 462; 628 NW2d 120 (2001). An abuse of discretion occurs where a trial court's decision falls outside of the range of principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). Appointment of substitute counsel requires a showing of good cause and that the substitution will not unreasonably disrupt the judicial process. Good cause exists where a defendant and his counsel develop a legitimate difference of opinion with regard to a fundamental trial tactic. *T aylor*, *supra* at 462. Mere allegations that defendant lacks confidence in counsel do not establish good cause to substitute counsel. *Id.* at 463. Nor may a defendant "purposely break down the attorney-client relationship by refusing to cooperate with his assigned attorney and then argue that there is good cause for a substitution of counsel." *Id.* at 462.

A defendant's decision to file a grievance against his counsel is, without more, insufficient to justify substitution of counsel. *T aylor*, *supra* at 463. On appeal, defendant argues that the trial court was required to inquire further concerning his underlying reasons for filing the grievance. However, defendant has not presented this Court with any underlying rationale for his decision to file the grievance. Nor has he provided support for his statement that he thought his attorney would be biased against him as a result of his decision to file the grievance. Further, he has not explained whether or how he and his attorney differed about a fundamental trial tactic. Moreover, given that this request was made on the day of trial, defendant had the obligation of demonstrating that a new appointment would not upset the judicial process, which he did not do. See *People v Johnson*, 144 Mich App 125, 135; 373 NW2d 263 (1985) (finding that a substitution of counsel on the day of trial would "significantly [disrupt] the judicial process by requiring an adjournment in order to permit the substituted counsel to become familiar with the case."). We conclude that defendant has not met his burden of demonstrating that the trial court abused its discretion in denying defendant's request.

Defendant also argues that the prosecution presented insufficient evidence to support his conviction of attempted breaking and entering with intent to commit a larceny. We review a defendant's allegations regarding insufficiency of the evidence de novo. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). We view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *Id.* Satisfactory proof of the elements of the crime can be shown by circumstantial evidence and reasonable inferences arising therefrom. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). It is for the trier of fact to determine what inferences fairly can be drawn from the evidence and the weight to be accorded to those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The elements of breaking and entering are that: "(1) the defendant broke into a building, (2) the defendant entered the building, and (3) at the time of the breaking and entering, the

defendant intended to commit a larceny or felony therein.” *People v Adams*, 202 Mich App 385, 390; 509 NW2d 530 (1993). An attempt consists of: (1) an intent to commit an offense prohibited by law, and (2) any act toward the commission of the intended offense. *People v Jones*, 443 Mich 88, 100; 504 NW2d 158 (1993). Here, defendant argues that the prosecutor failed to present evidence that defendant intended to commit a larceny when he tried to enter the service building. Defendant ignores the impact of the testimony from Halton. Halton testified that they walked to the building from a friend’s home. When they arrived, defendant looked inside the building through a window. Defendant told Halton that there were “a lot of tools in there” and that “he can get them.” Defendant then jiggled the handle of the door, but it would not open. Because of the difficulty of proving an actor’s state of mind, minimal circumstantial evidence is sufficient to establish the element of intent. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). Halton’s testimony, especially when combined with the other testimony concerning defendant’s attempt to enter, provided circumstantial evidence to support a finding that defendant intended to steal the tools at the time he tried to enter the building.

We affirm defendant’s convictions, but remand this matter to the trial court with instructions that the trial court enter an amended judgment of sentence reflecting that defendant was found guilty of attempted breaking and entering, MCL 750.110 and MCL 750.92. MCR 6.435(A); MCR 7.208(A)(1).

Affirmed.

/s/ Pat M. Donofrio  
/s/ David H. Sawyer  
/s/ William B. Murphy